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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/844,047	04/30/2001	Ronald L. Beale	133/28	2696

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Averill & Varn
8244 Painter Ave.
Whittier, CA 90602

EXAMINER

BREVARD, MAERENA W

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 05/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/844,047

Applicant(s)

BEALE, RONALD L.

Examiner

Maerena W. Brevard

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 9-12, 15 and 17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 9-12, 15 and 17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. The amendment filed 2/17/04 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the gap space 29 between the bladders which contains no bladder. Although Figures 1 and 3-6 show parallel bladders having a gap space between them, the gap space includes a portion of the bladder (bridge conduit) and therefore does not meet the limitation of containing "no bladder."

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-4, 9-12, 15, and 17 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention. The recitation "a gap space containing **no** bladder" in claims 1 and 9 is considered new matter since it was not described in the specification.

The dependent claims not specifically mentioned are rejected as being dependent upon a rejected base claim, since they inherently contain the same deficiencies therein.

Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jaeger in view of Bertholon.

Jaeger discloses a back support apparatus (Figure 3) for use with a backpack, the apparatus comprises a pair of elongated inflatable tubular bladders (18, both outer bladders) spaced generally parallel to each other, separated by a gap space (which includes the middle bladder), and connected to a front panel of the backpack and valve means (19) for deflating the bladders, but does not teach a pump means for inflating the tubular bladders. However, Bertholon teaches a pump means (6) for inflating the bladder of inflatable shoulder straps. It would have been obvious to use the pump of Bertholon with the inflatable structure of Jaeger to inflate the bladders. Doing so would provide an attachment that would provide an easier and quicker means of inflating the bladders.

Regarding the tubular bladders each having a circular cross sectional shape and having an upper terminus extending upwardly at least as high as the upper attachment points, it would have been an obvious matter of design choice to change the shape and increase the size of the bladders to have the upper terminus extend at least as high as the upper attachment points, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

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Regarding claims 2-4, the two outer bladders are spaced at most two inches from each other and inflated to a diameter no more than two inches, to exert a support force against the user's spinal column from opposite sides thereof, to the same degree claimed.

Response to Arguments

6. Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references. The bladders as taught by Jaeger in Figure 3, obviously read on the claims as written. The gap space, which includes no bladder, cannot be considered an essential feature of the applicant's invention since it is considered new matter.

Allowable Subject Matter

7. Although claims 9-12, 15, and 17 have not been rejected on prior art, the examiner cannot indicate these claims to be allowable until clarification from applicant regarding the 35 USC 112, 1st paragraph rejection, discussed in paragraph 2 above, has been addressed.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Maerena W. Brevard whose telephone number is 703/305-0037.

The examiner can normally be reached on M-Th; 8:00 AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703/308-2572. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MB
Maerena Brevard
May 12, 2004

Lee Young
5/12/04
LEE YOUNG
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700